

**JOHN DEERE**

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Chad Strobbe
Environmental Specialist Senior
Land Quality Bureau
Iowa Department of Natural Resources
502 East 9th Street
Des Moines, IA 50319-0034

Comments on proposed changes to Iowa Administrative Code (IAC) 567 Chapter 108

Dear Mr. Strobbe:

The John Deere Foundry in Waterloo, Iowa (JDFW) is a green sand foundry that generated more than 84,000 tons of spent foundry sand for beneficial reuse in FY2007. This sand is currently placed in the Basic Materials Corp. Waterloo South Quarry as beneficial fill material as allowed under the Iowa Administrative Code (IAC) 567 Chapter 108.

The Iowa Department of Natural Resources (IDNR) has determined that: "The land application of solid waste is considered disposal and not a beneficial use." Then the department states in its cover letter that: "Due to the scope of changes being proposed and the extent of regulated public affected, the formation of a small stakeholder group to assist in the development of this rule is not practical."

This proposed change has huge implications for those regulated under IAC 567.108. The "scope of changes being proposed and the extent of the regulated public affected" is exactly why this rule change should have a stakeholder group formed to assist in developing a revised regulation – a significant increase in costs and facility resources. Though the department is considering comments submitted by August 8, 2008, the department states it "will evaluate and incorporate stakeholder feedback for secondary review by August 22, 2008." There is no justification for the rush to get this rule change implemented, nor has the department made a compelling case for an immediate threat to human health or the environment to justify such a rapid time table. The scope of this rule change is exactly the kind of change that should involve a stakeholder group before presentation to the Commission.

Removing foundry sand from beneficial reuse by definition and the striking of 567-108.6(1) in its entirety is not supported by any objective evidence. On the contrary, under the existing rules, foundry sand has been tested via TCLP and SPLP for the 18 heavy metals listed in the drinking water maximum contaminant level (MCL) regulations. The analytical results for all analytes have been found to be below the limit of 10 times the MCL for drinking water, and in nearly all cases are below the actual MCL for drinking water. Foundry sand has been disposed as beneficial reuse material for over 4 years without incident. John Deere believes these rules are protective as written as related to foundry sand. Use of foundry sand as a fill material should remain an option under the universally approved beneficial use determinations under Section 108(4).

Our specific comments are as follows:

1. The cover letter to Iowa Stakeholders states: "Due to the scope of changes being proposed and the extent of regulated public affected, the formation of a small stakeholder group to assist in the development of this rule revision was not practical." The first paragraph of the letter states that: "Based upon the recommendations from the 2003 stakeholder advisory committee, the department is revisiting this chapter..."

If the rule revision was able to be handled in 2003 by a stakeholder advisory committee, it seems the same thing could and should be done with this extensive revision. The department has not made a compelling reason for not doing so. Submitting formal written comments is not as productive at getting concerns on these extensive rule revisions expressed as in face to face meetings. These meetings would also be productive in assisting the regulated community to understand the science behind the proposed changes.

2. Statements in proposed section 108.5(2)a are not clear.
 - In 108.5(2)a(1) – what are considered to be "elevated levels" of hazardous or toxic materials?
 - In 108.5(2)a(2) – what is the definition of "biologically available" of hazardous or toxic constituents?

Without knowing what the department means by these terms, it is not feasible to comment intelligently on this section of the proposed rule.

3. Proposed 108.5(2)b(1) states: "determine which, if any, hazardous or toxic constituents are present in the proposed solid by-product at levels exceeding those found in the material it is replacing." This statement implies that any by-product must be of the exact chemical characteristics as the material used. That of course is impossible. The same comment applies to 108.5(2)b(2) on the TCLP results of the by-product and the raw material. What is meant by "levels exceeding?" Is any exceeding impermissible? If some exceeding is permissible, how much and what? What will be done with this data? The department should delete sections 108.5(2)b(1) and (2).
4. Deere & Co. believes the existing rule requirement for TCLP and SPLP testing of the by-product material or as proposed in 108.5(2)b(3) to be protective of the environment and health.
5. Section 108.5(2)b(4) should have the requirement for 95% CL removed. This additional chemical testing is costly and it provides no more clarity in defining the terms "elevated level" or "levels exceeding" mentioned previously.
6. Section 108.5(2)c appears to require a risk assessment for using the by-product including "routes of exposures to humans and ecological receptors." If a risk assessment is going to be required, the need for all the analytical data in sections 108.5(2)a and b seem unnecessary. The risk assessment process will dictate what needs to be tested for. The department should select one or the other method for determining if a by-product is suitable for use – chemical analysis or the assessment required by 108.5(2)c. Because chemical testing is the most common way of classifying wastes, and provides a bright line for evaluation, Deere & Co. suggest that 108.5(2)c be eliminated.

7. Finally, IDNR gives no rationale for eliminating fill for beneficial reuse, but instead expects generators to follow sanitary landfill rules, for what is termed "land application of waste," which requires a lengthy permit process, and which will likely end the prospect of reusing perfectly satisfactory fill material such as foundry sand which has met all specified chemical requirements. Citizens are not going to let "sanitary landfills" be placed anywhere in the state. This proposed change will make it extremely difficult and costly for generators to manage useful material. The effect of this rule change will lead to the faster filling of Iowa landfills, which is contradictory to the original rule purpose - Solid By-Products as Resources and Cover Material.

In summary John Deere recommends that:

- The definition for "fill material" must remain in the rules as defined in the existing rules under the definitions in Section 108(3).
- Foundry sand must remain listed in section 108.4(6) as fill material pursuant to 108.6(1) under universally approved beneficial use determinations.
- The definition of "fill material" should remain in the rules.
- Section 108.6(1) must remain in the rules

Thank you for the opportunity to comment on the proposed changes. Please contact me at 309-765-5435 if there are questions on these comments.

Sincerely,



Michael E McGuire
Manager, Environmental Control